

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GERSON NUNEZ,

Defendant.

Case No. 3:99-cr-00036-HRH

ORDER STAYING ACTION

On January 2, 2008, Gerson Nunez, representing himself, filed a motion for re-sentencing under 28 U.S.C. § 3582(c), in light of the new sentencing guidelines with respect to "crack" cocaine.¹ Mr. Nunez has also filed a motion for appointment of counsel.²

As recently explained by the Supreme Court in *Kimbrough v. United States*, the guidelines were changed, effective November 1, 2007, to reduce "the base offense level associated with each quantity of crack by two levels."³ The Supreme

¹ See Docket No. 660.

² See Docket No. 661.

³ *Kimrough v. United States*, 128 S.Ct. 558, 569 (2007), citing Amendments to the Sentencing Guidelines for United States Courts, 72

Court noted, at the time, that "[t]he Commission has not yet determined whether the amendment will be retroactive to cover defendants like Kimbrough."⁴ Since that case was decided, it has been determined that the guidelines will become retroactive on March 3, 2008.⁵ Therefore, Mr. Nunez's motion is premature.

IT IS THEREFORE ORDERED that:

1. The motion for re-sentencing, at docket number 660, is denied with leave to re-file on or after **March 3, 2008**.
2. Mr. Nunez's application for appointment of counsel, at docket number 661, is GRANTED. The Federal Public Defender for the District of Alaska will designate counsel from the CJA Panel or the Federal Public Defender's office to represent Mr. Nunez in this case, for the purposes of filing a motion under section 3582(c).

Fed.Reg. 28571-28572 (2007).

⁴ *Id.* at n. 11.

⁵ See Nov. 1, 2007, amendments to U.S.S.G. § 2D1.1, which the Sentencing Commission has determined may be grounds for a sentencing reduction effective March 3, 2008, by operation of 18 U.S.C.A. § 3582 (2); *United States v. Jimenez*, ___ F.3d ___, 2007 WL 4531791 *7 n. 6 (1st Cir. Dec. 27, 2007) ("In the interim since the briefs in this appeal were submitted, amendments to the sentencing guidelines were ratified by Congress, becoming effective as of November 1, 2007. Even more recently, the Sentencing Commission has made those amendments retroactive (as of March 3, 2008).").

3. Counsel for Mr. Nunez shall review the record, confer with him, and file an amended motion, or other appropriate document, **on or after March 3, 2008**, and before April 2, 2008.
4. The Government may file a timely response after counsel for Mr. Nunez's post-March 3, 2008, filing.

DATED this 10th day of January, 2008, at Anchorage, Alaska.

/s/H. Russel Holland
United States District Judge